

1 A Yes, I do.

2 Q And do you see the date on that?

3 A Yes.

4 Q The date is?

5 A November 23rd.

6 Q Are you aware of any document that precedes this  
7 in time that suggests that Mr. Campbell is working on behalf  
8 of or for Mr. Hicks?

9 A I know of no document, no, but I've never seen  
10 this either. No.

11 Q Now, also, could you please turn to Mass Media  
12 Bureau Exhibit 48?

13 Now, if I understood your testimony correctly, the  
14 first page, the March 18, 1994, letter is the letter by  
15 which you transmitted the typed memo to Mr. Campbell,  
16 correct?

17 A I believe it is.

18 Q Is there anything in writing that you're aware of  
19 that also transmits the March 4 memo to anybody other than  
20 Mr. Campbell?

21 A There is nothing in writing, and normally I'm  
22 thinking I would have put the copies down at the bottom, for  
23 example.

24 The reason I know that and I reason I can say that  
25 with definite is because of the production -- when we went

1 through the production of documents, that memo came from  
2 more places than just my file.

3 Q The March 4 memo came from more places?

4 A Yes.

5 Q And those places were?

6 A Dave Hicks' file, and Steve Kline's file. They  
7 had it both in their files. John didn't, but I know that I  
8 gave a copy to John. I mean, I remember that.

9 Q Now, do you happen to know whether there is a  
10 written -- I think I may have just asked you this. I'm  
11 sorry.

12 Was there a written transmittal form or memo that  
13 you authored to send the March 4 memo to --

14 A Not that I recall.

15 Q And just to clarify, my question was going to be  
16 completed by sending it to Mr. Hicks or to Mr. Dille or to  
17 Mr. Kline.

18 A I don't recall there being anything else in  
19 writing other than what you're seeing. However, I would  
20 like to state again that these documents, when they were  
21 produced, it came from Dave Hicks' file, Steve Kline's and  
22 my file is where this document -- this memo came from.

23 I also remember them making sure they got a copy  
24 of it. But it, even to me, was further evidence that they  
25 got a copy when they produced it during the production of

1 documents. And I do remember giving a copy to John Dille.

2 Q I believe, in response to questions from Mr.  
3 Guzman, you made reference to so many months, I believe it  
4 was 16 months in which the amount owed by -- there was an  
5 amount owed by Hicks to Pathfinder, and then the remainder  
6 of the time frame that you were talking about, it was  
7 Pathfinder that owed money to Hicks.

8 And I believe, in response to questions, you  
9 answered that in neither instance was interest charged.  
10 What I don't remember is whether the question why was asked,  
11 and I'm asking that now.

12 Why was it that no interest was charged by  
13 Pathfinder with respect to monies that Hicks owed and  
14 conversely, why was no interest paid by Pathfinder to Hicks  
15 when the situation was reversed?

16 A Well, it really wasn't thought of -- it was  
17 thought of as an accounts receivable, and it was going back  
18 and forth at that time, and it just wasn't thought of as  
19 anything by an accounts receivable, and we just don't charge  
20 it. Wouldn't have thought to charge interest on this  
21 accounts receivable at that point.

22 Q Notwithstanding --

23 A It just wasn't considered charging interest.

24 Q Notwithstanding that the amounts in question  
25 exceeded tens of thousands of dollars at various points in

1 time?

2 A Yes, it wasn't really considered charging  
3 interest. I mean, you know, for -- I mean, in one instance  
4 where the payroll to Hicks, for example, when Pathfinder  
5 owed Hicks, they could have had that money. I mean, all  
6 they had to do is -- all Dave had to do is ask for it, and  
7 he'd have got it.

8 Now, I don't know. We didn't charge -- consider  
9 charging interest.

10 Q Now, in terms of where that money rested, if you  
11 will, resided, was that in a non-interest bearing account  
12 for Pathfinder?

13 A No, not exactly. It was in a checking account  
14 that does get swept into what's called a sweep account at  
15 night and does earn a little interest.

16 Q Now, did any of the interest that was earned as a  
17 result of that end up with Hicks?

18 A No, Jim. It was just thought of as a short-term  
19 receivable. There was no interest thought of in either way.

20 Q Now, conversely, did Pathfinder have a situation  
21 during the period of time, beginning April 1, 1994, let's  
22 say, up to the date of the show case order, which puts it  
23 around June 1st of '98, roughly, did Pathfinder have to  
24 utilize any kind of line of credit in order to cover its  
25 bills?

1 A No.

2 Q With respect to the assignment application, it's  
3 my understanding that you received initially a copy of the  
4 application that Mr. Hicks had filled out in pencil or pen?

5 A Yes. I don't know quite how but I did get it.  
6 yes, I recall getting a copy of it.

7 Q And --

8 A The copy is in my file, so I assume I got it.

9 Q -- at the time you received it, is it your  
10 testimony that you did not give that application a once over  
11 to satisfy -- what you received from Mr. Hicks a once over  
12 to satisfy yourself that the questions were answered  
13 accurately?

14 MR. HALL: Objection. Assumes facts not in  
15 evidence. He didn't testify he received that from Mr.  
16 Hicks. He said he found a copy in his file. He didn't  
17 testify that he got it from Mr. Hicks.

18 JUDGE CHACHKIN: I'll sustain the objection.

19 BY MR. SHOOK:

20 Q With respect to the draft application that you  
21 received, did you look it over to ensure that the  
22 information on it appeared to you to be accurate?

23 A Absolutely not.

24 Q And this is notwithstanding the fact that the  
25 Dille children are going to become a part of this

1 application.

2 A Keep in mind that my task was looked at at that  
3 point the way I look at these applications all the time. I  
4 look at the exhibits with respect to the ownership  
5 questions. At that time an attorney, which I knew and had  
6 great respect for, was filling this thing out, or excuse me,  
7 was reviewing this. He would be looking at this application  
8 for completeness, looking at the questions and how they were  
9 answered. I never look at that.

10 If I had been given the responsibility of  
11 answering those questions, then I'll take a -- then I'll  
12 look at them and answer them, but I never had that  
13 responsibility.

14 Q Other than Mr. Campbell, are you aware of anybody  
15 on behalf of the Dille children who reviewed that draft  
16 application for accuracy and completeness?

17 A No.

18 Q With respect to the operating agreement, when the  
19 operating agreement was being put together what knowledge,  
20 if any, did you have of negotiations that were taking place  
21 that preceded and were involved with the insertion of the  
22 call provision into the operating agreement?

23 A I didn't -- I wasn't aware of any negotiations.

24 Q Do you have any knowledge as to who would have  
25 such knowledge?

1 A If there was negotiations?

2 Q Yes, sir.

3 A That would have been, I guess, between John and  
4 Dave.

5 Q And that's based on your understanding of the  
6 respective roles of the individuals during the preparation  
7 of the operating agreement, correct?

8 A Yes.

9 Q I mean, it's not based on any statement that  
10 either one of them made to you?

11 A No. I mean, I know that that was being discussed  
12 during the preparation of the operating agreements. That's  
13 the only discussions I know of, is during the preparation of  
14 the operating agreement.

15 Q With respect to the charge that was a part of the  
16 accounting agreement, I believe initially it was \$705.00 and  
17 then ultimately it was raised to \$1,000 dollars.

18 A Yes.

19 Q There were some questions that were asked you  
20 about how it was that the \$705.00 figure was arrived at.  
21 Could you briefly clarify how that figure was arrived at?

22 A The business office itself, all the employees of  
23 the business office reside as employees of Truth Publishing  
24 Company. The business office makes a charge to Pathfinder  
25 for accounting services, and it's meant to be an equitable

1 charge of the total picture so that -- so that -- because,  
2 you know, these people are doing accounting for Pathfinder  
3 and they're doing -- and there are some other companies too  
4 that we do and make a similar charge for. And it's meant to  
5 be an equitable charge for the work that's being done.

6 That charge, at that time was the same as to  
7 another radio station, and thought to be an equitable  
8 charge, and at that time, looking at what was going to be  
9 done and the infrastructure that was already there, thought  
10 that that was a reasonable charge, and there wasn't a lot of  
11 thought given to it, but that was a reasonable charge to  
12 charge Hicks for that service, and it was, again, it was a  
13 charge that was actually becoming then a reduction of  
14 expense, you might say, on, at that time, Truth Publishing  
15 Company, not Pathfinder, okay.

16 Now, as it turned out and as time went along,  
17 there was quite a little -- I mean, there was a few more  
18 things that time was being required that wasn't the normal,  
19 quite the normal radio station because it was just a little  
20 bit more.

21 Q Could you give us some examples of what you're  
22 thinking of there?

23 A Well, for example, there is no balance sheet  
24 prepared for a radio station. It's part of Pathfinder.  
25 There is no -- you don't have to have separate distributions



1 for your one radio station that's part of a bigger group, of  
2 course, part of a group for Pathfinder. You don't have to  
3 have separate distributions. The notes to shareholders,  
4 that was requiring a little more time. Just in general you  
5 were accounting for a separate entity, which was not just  
6 the radio station, it was Hicks as an entity also. Whereas  
7 the charge to a particular radio station just meant to do  
8 accounting for that radio station.

9 So it just thought -- again, didn't think because  
10 it was \$705.00 after -- having worked with it for awhile was  
11 equitable enough, and proposed still what I think was a good  
12 deal for Dave, and he agreed. I mean, and I still think  
13 it's probably a good deal. It's a pretty good deal for him.

14 Q In other words, in March of 1994, when the  
15 accounting agreement was executed between yourself on behalf  
16 of Pathfinder and Mr. Hicks on behalf of Hicks Broadcasting,  
17 that \$705.00 figure was being charged to each of the  
18 Pathfinder radio stations by Truth for the accounting  
19 service that was provided?

20 A That was the fee at that time, and that's how the  
21 fee was arrived at. It was just a method in which it was  
22 arrived at. I mean, if you're charging it for this radio  
23 station, why wouldn't a similar fee work for this one, and  
24 that's how it -- yeah, that's how it arrived it.

25 It's just -- I guess what I'm trying to explain is

1 that it -- just because it was a Pathfinder station, I mean,  
2 had we been doing for some other station we would have had  
3 that fee to go by.

4 Q Did the \$705.00 fee to the Pathfinder stations  
5 ever change?

6 A It has -- yes, it has changed. It's increased but  
7 it's well below \$1,000. The fee to Hicks is more because  
8 there is more time spent because of the corporate things  
9 that aren't done, the corporate things.

10 Q When did the fee to the other Pathfinder stations  
11 change?

12 A It's looked at annually to determine whether it  
13 should be changed.

14 Q Did the fee change in 1995?

15 A For the stations?

16 Q Yes, sir.

17 A Yes.

18 Q So it's --

19 A It's never approached \$1,000 if that's what you  
20 mean.

21 Q Right. No, I'm just trying to determine --  
22 apparently in March of '94 the fee charged to Hicks  
23 Broadcasting and to other Pathfinder stations was the same  
24 if I'm understanding your testimony.

25 A Yes.

1           Q     And then are you saying that in 1995 at some point  
2     the fee to the Pathfinder -- other Pathfinder -- to  
3     Pathfinder stations was changed in some way?

4           A     The fee to the Pathfinder stations, and again, it  
5     normally changes on the first of the year, and I can say  
6     that it probably changed every year. I don't know offhand  
7     without going back and looking, but I know that it's changed  
8     since then once or twice, maybe every year a little by  
9     little bit.

10          Q     Always increasing?

11          A     I don't know. I think that -- I don't know. That  
12     may depend on the number of stations at the time that  
13     Pathfinder has, but it never fluctuates a great deal.

14               MR. SHOOK: Your Honor, the Bureau has no further  
15     questions.

16               Before -- just to clarify something, should we --  
17     we could offer Mr. Watson's deposition, which is the  
18     attachment to our Exhibit 1 now, or we can wait until the  
19     conclusion of their presentation, however you wish.

20               JUDGE CHACHKIN: Well, no, what do you mean?  
21     Whose presentation?

22               MR. SHOOK: Well, Pathfinder, I believe, has some  
23     additional questions to ask.

24               JUDGE CHACHKIN: Do you have any additional  
25     questions?

1 MR. JOHNSON: Just a very small handful, Your  
2 Honor.

3 JUDGE CHACHKIN: Go ahead with your questions.

4 RECROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q Mr. Watson, you may have now testified longer  
7 than Bill Gates in the Microsoft trial occurring up the  
8 street. I'll try and be very brief.

9 JUDGE CHACHKIN: Well, he's not even testifying.

10 (Laughter.)

11 MR. JOHNSON: Then that makes the statement  
12 profounder.

13 (Laughter.)

14 JUDGE CHACHKIN: It's already profound.

15 BY MR. JOHNSON:

16 Q Could you pull, please, Mass Media Bureau Exhibit  
17 No. 57, which is in Volume 2 of the Mass Media binder of  
18 exhibits?

19 A I'm sorry. It's --

20 Q Yes. It's tab No. 57.

21 A Okay.

22 Q Now, in response to questions by Mr. Shook, he  
23 asked you about there being a time when you became aware of  
24 negotiations concerning the call provision.

25 Do you remember Mr. Shook's questions to you

1 around that topic?

2 A Yes, and we talked about negotiations.

3 Q Yes, sir. That's what I want to ask you about. I  
4 just want to see if I can get your best recollection as to  
5 the days.

6 And I think, in response to those questions, you  
7 told Mr. Shook that you remember that being at or around the  
8 time of the finalization of the operation agreement.

9 Have I got that correct?

10 A Yes, sir.

11 Q Tell me if I have it right

12 A No, you've got it right.

13 Q Okay, now, with reference to Mass Media Bureau  
14 Exhibit No. 57, Mr. Watson, do you have any recollection of  
15 the approximate time that you first became aware of  
16 negotiations concerning the call provision?

17 A Negotiations.

18 Q Concerning the call provision.

19 A No. I don't remember the date. I'm sorry. It  
20 was some time in March.

21 Q Okay.

22 A There was negotiations that started taking place  
23 here. It was some time, and it was some time -- it would  
24 have been after the first draft or two of this, and if I  
25 recall, there were a number of drafts.

1 Q And the reason I asked you refer to Exhibit No. 57  
2 is that's -- although it's an unsigned exhibit, there has  
3 been a lot of testimony about it. That's dated March 24,  
4 1994, correct?

5 A Right.

6 Q Would it be fair to assume that the negotiations  
7 around the call provision about which you were aware began  
8 at or about March 24, 1994, or a few days sooner, a few days  
9 later?

10 A Well, I'm reasonably sure it would have been a  
11 little bit sooner than that; not a lot. But the reason I  
12 remember it is because the significant part that I remember  
13 is on, I think, the date before this, or a day or two before  
14 this. The call provision that was sent to Sam to put into  
15 the operating agreement was the exact language that was in  
16 the JAM Communications shareholders agreement, the one that  
17 had been negotiated with a separate shareholder in December,  
18 and signed in December 1992.

19 And I know that -- how that came about, the  
20 negotiations at that point I'm not -- I don't really  
21 remember other than -- I don't remember any negotiations  
22 other than in March.

23 But that's the first significant part that I had,  
24 and that is sending that. I was very much aware of that  
25 call provision in the JAM Communications document, and I

1 sent that to Sam.

2 Q And you may have said this, Mr. Watson, if you  
3 did, I just wasn't listening carefully enough, was that a  
4 few days prior to this March 24, 1994, date?

5 A I think it was a day or so before.

6 Q If I could -- Mr. Shook asked you a couple of  
7 questions about the receivable that appeared on the books,  
8 and that is to say the receivable from Hicks to Pathfinder.

9 Do you recall that testimony?

10 A Yes.

11 Q And, in particular, he asked you if it was ever a  
12 time when Pathfinder charged Hicks any interest on that  
13 receivable.

14 Do you remember that?

15 A Yes.

16 Q And you said there was not a time, correct?

17 A No, not that I recall. No, I don't think there  
18 ever was.

19 Q I take it there were receivables on the books of  
20 Pathfinder from vendors or contractors or other entities  
21 other than Hicks?

22 A Yes.

23 Q Do you charge interest in those receivables?

24 A No, we never have. And it's pretty traditional in  
25 the industry that you don't.

1 Q Now, if I can ask --

2 A People have tried but they haven't been very  
3 successful.

4 Q Let me direct your attention, if I could, please,  
5 to Mass Media Bureau Exhibit No. 40. This is an exhibit  
6 that Mr. Shook asked you a number of questions about. I think  
7 it's what you described as the engagement letter --

8 A Yes.

9 Q -- from Mr. Campbell, correct?

10 A Yes.

11 Q What's the date of that letter?

12 A December 17, 1993.

13 Q And do you remember Mr. Shook asking you whether there  
14 was any indication in writing, so far as you knew, that Mr.  
15 Campbell had been engaged by Hicks Broadcasting of Indiana  
16 on any date prior to December 17, 1993? Do you remember  
17 that question?

18 A Yes, I do. And I'm trying to -- yeah, I remember  
19 the question, and I'm recalling my answer, and I don't think  
20 I know of anything.

21 Q Okay. Well, let's look at another exhibit that  
22 Mr. Shook showed you, which is Mass Media Bureau Exhibit No.  
23 33. It's in the same binder.

24 A Okay.

25 Excuse me, sir. I also testified and told that I



1 knew he was doing work.

2 Q I understand that.

3 A All right.

4 Q I'm just trying to be clear about the dates if I  
5 can.

6 A Okay.

7 Q And I think you told Mr. Shook that you don't  
8 recall ever seeing this document before. Am I right about  
9 that?

10 A I don't recall it, no.

11 Q Okay. Do you recognize any of the handwriting on  
12 the document?

13 A Yes, it's all of Dave Hicks'.

14 Q And are you able -- don't read it out loud, but  
15 just tell me whether or not you're able to read the  
16 notation.

17 A Yes, I am.

18 Q Okay. It's a reference to Mr. Campbell as the  
19 attorney for Hicks Broadcasting, correct?

20 A Correct.

21 Q Can you tell us what the date of this document is?

22 A November 23rd.

23 Q Okay. Now, if you could refer also back to Mass  
24 Media Bureau Exhibit No. 22.

25 A Okay.

1 Q And you do recognize this document, don't you, Mr.  
2 Watson?

3 A Yes.

4 Q This is the letter that you wrote to David Fulton,  
5 correct?

6 A Yes.

7 Q Who is Mr. Fulton?

8 A Fulton was the transactional lawyer for John  
9 Booth, or for Booth American. Excuse me.

10 Q So Mr. Fulton represented Booth American at that  
11 time, correct?

12 A Yes.

13 Q Okay. And the date indicated on Exhibit No. 22  
14 appears to me to be September 27, 1993.

15 To the best of your recollection, is that date  
16 accurate?

17 A Yes, it would be.

18 Q Okay. On September 27, 1993, was Pathfinder  
19 involved in any transactions with Booth American?

20 A No.

21 Q Who was?

22 A Hicks Broadcasting was.

23 Q Okay. Now, with reference to the three exhibits  
24 that we've just looked at, the December 17th memorandum from  
25 Mr. Campbell, the engagement letter, the November 21st

1 handwritten note from Mr. Hicks --

2 MR. SHOOK: November 23rd, counsel?

3 MR. JOHNSON: I beg your pardon?

4 MR. SHOOK: May 23rd. November 23rd.

5 THE WITNESS: Yes, November 23rd.

6 MR. JOHNSON: I believe it's 23rd is accurate.

7 November 23rd. Thank you, counsel.

8 BY MR. JOHNSON:

9 Q Memorandum from Mr. Hicks, and now the September  
10 27th letter from yourself. My question is this, Mr. Watson:  
11 You testified, in response to questions from Mr. Shook, that  
12 it was your belief that Mr. Campbell first starting doing  
13 work for Hicks Broadcasting some time in September 1993; is  
14 that correct?

15 A Yes.

16 Q Is anything that we've seen in these three  
17 documents change your recollection about that?

18 A No, not really. I mean, when I was answering the  
19 question did I know of anything in writing that put Alan as  
20 the attorney prior to those dates, I was excluding this  
21 because I had already referred to this. I thought you meant  
22 something else other than this.

23 No, I don't --

24 Q My question --

25 A There is nothing that changes my mind on that,

1     sir.

2           Q     So having reviewed these documents, your testimony  
3     here today still was that Mr. Campbell began representing  
4     Hicks Broadcasting some time in September of 1993?

5           A     Absolutely.

6           JUDGE CHACHKIN: That's not his testimony. It  
7     can't be his testimony. All he knows is he worked for him.  
8     In what capacity he did work, we don't know because the only  
9     thing we have is one representational letter. Now, maybe  
10    you could produce another letter whereby Mr. Campbell agreed  
11    to work for Hicks earlier than that.

12          MR. JOHNSON: Well, actually, that's a fair point.  
13    I don't mean to belabor it with this witness because Mr.  
14    Campbell is going to testify --

15          JUDGE CHACHKIN: Fine.

16          MR. JOHNSON: -- on this topic. But I just wanted  
17    to give Mr. Watson an opportunity to look at the same  
18    documents to say whether or not he, having reviewed those,  
19    has a different recollection of when he recalled that Mr.  
20    Campbell started working with Mr. Hicks.

21          JUDGE CHACHKIN: Well, the question as when he  
22    represented Mr. Hicks as a lawyer; not when he did work for  
23    him.

24          BY MR. JOHNSON:

25          Q     Are you aware, Mr. Watson, of Mr. Campbell doing

1 any work for Mr. Hicks other than his representing him as a  
2 lawyer?

3 A No. No, he was Hicks' FCC counsel.

4 Q So when you testified that you're aware that Mr.  
5 Campbell had worked for Mr. Hicks, do you mean representing  
6 Hicks Broadcasting as a lawyer?

7 A Yes, I mean representing Hicks Broadcasting.

8 Q Okay. And Judge Chachkin's point is a good one,  
9 but having clarified that is there anything in these  
10 documents that leads you to a different recollection of when  
11 it is that Mr. Campbell began representing Hicks  
12 Broadcasting?

13 A No.

14 MR. JOHNSON: Thank you.

15 JUDGE CHACHKIN: Well, we'll just have to wait and  
16 see when we get a letter from Campbell showing what he was  
17 formally hired to represent Hicks, and if he did work in  
18 another capacity before was formally hired, then we'll have  
19 to find out what the arrangement was or what agreement was  
20 made.

21 MR. JOHNSON: Thank you, Your Honor. I don't have  
22 any further questions.

23 JUDGE CHACHKIN: All right.

24 You have no questions based on --

25 MR. SHOOK: No, Your Honor.

1 JUDGE CHACHKIN: Thank you, Mr. Watson.

2 THE WITNESS: Thank you, Your Honor.

3 (Witness excused.)

4 MR. SHOOK: Now, with respect to the deposition.

5 JUDGE CHACHKIN: Yes, we're going to get into  
6 that.

7 MR. SHOOK: Okay.

8 (Pause.)

9 MR. SHOOK: I guess it's my turn to talk.

10 JUDGE CHACHKIN: I guess so.

11 MR. SHOOK: Your Honor, to the extent that  
12 portions of Exhibit 1 is not in evidence at this point, the  
13 Bureau would offer Exhibit 1 with the caveat that the  
14 depositions that are a part of Exhibit 1 include only those  
15 portions that we have denominated by a letter that was sent  
16 to you and the other parties prior to the taking of  
17 testimony in this proceeding.

18 JUDGE CHACHKIN: Well, let's first deal with the  
19 items other than the depositions because they will be less  
20 controversial.

21 What page of the exhibit?

22 MR. SHOOK: Well, Your Honor, it's recorded that  
23 pages 14 through 30 have already been received into  
24 evidence.

25 JUDGE CHACHKIN: That's correct.

1 MR. SHOOK: We would ask that pages 1 through 13  
2 be admitted into evidence, and that pages 31 through 115 be  
3 admitted into evidence.

4 JUDGE CHACHKIN: Are those the depositions?

5 MR. SHOOK: No, sir.

6 JUDGE CHACHKIN: Any objections to the receipt  
7 into evidence of those pages?

8 MR. HALL: Yes, with respect to Hicks, these are  
9 request to Pathfinder. To the extent they would come in, we  
10 would request that they come in only for admissions made by  
11 Pathfinder and not against Hicks. That would be respect to  
12 pages 1 through 13.

13 Similarly, with some of the documents, there has  
14 been no foundation laid for some of these documents, and  
15 Hicks has no knowledge about the accuracy or the  
16 authenticity of a number of these documents, particularly  
17 documents at page 31, which is a memo from Dille to Booth,  
18 and also Attachment 4, a memo from Watson -- page 34  
19 through, I'm not sure where -- I'm sorry, 34 through 39 it  
20 looks like, to the Dille children and checks back.

21 JUDGE CHACHKIN: First of all, let's deal with 1  
22 through 13.

23 MR. HALL: All right, let's start with that.

24 JUDGE CHACHKIN: One through 13 is admissions made  
25 by Pathfinder.

1 MR. HALL: That's correct.

2 JUDGE CHACHKIN: These should not be admitted as  
3 to Hicks.

4 MR. HALL: That's correct, Your Honor.

5 MR. SHOOK: Well, Your Honor, strictly speaking,  
6 when you're looking at Exhibit 1, pages 1 through 13 are  
7 simply our admissions request to Pathfinder. These do not  
8 include the responses of Pathfinder. Those are in Exhibit  
9 2.

10 JUDGE CHACHKIN: Just the request themselves?

11 MR. SHOOK: Yes.

12 MR. SHOOK: Perhaps in that sense we should offer  
13 Exhibit 1 and 2 collectively, because that would make -- I  
14 guess that would make more sense.

15 MR. WERNER: Jim, insofar as your admission  
16 requests are recapitulated in Pathfinder's response, then  
17 pages 1 through 13 are cumulative. They really don't need  
18 to come in at all.

19 JUDGE CHACHKIN: Well, there is no need for 1 if  
20 you already have the questions and answers in 2.

21 MR. SHOOK: In that sense, Your Honor, rather than  
22 offer 1 through 13 of Exhibit 1, let me withdraw that offer,  
23 and what we would offer instead is Exhibit 2, pages 1  
24 through 27.

25 MR. HALL: On behalf of Hicks Broadcasting, Your

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(202) 628-4888



1 Honor, I would request that any admission of these be  
2 limited to Pathfinder, not with regard to Hicks  
3 Broadcasting.

4 JUDGE CHACHKIN: What's the position of the  
5 Bureau?

6 MR. SHOOK: Your Honor, we believe that the  
7 evidence adduced to this point raises a sufficient question  
8 regarding an agency relationship between Pathfinder and  
9 Hicks. That with respect to the documents, certainly they  
10 should be available with respect to findings made concerning  
11 both Pathfinder and Hicks.

12 Also, I don't think that there is a serious  
13 question regarding the authenticity of any of the documents  
14 because they were included in the request for admissions.

15 JUDGE CHACHKIN: I mean, is there anything between  
16 these admissions and the one Mr. Hicks made which vary, in  
17 which there us a substantive disagreement?

18 MR. HALL: Your Honor, we believe they are asking  
19 for information that's known and is particular to  
20 Pathfinder. Hicks Broadcasting, for example, has no  
21 knowledge of whatever conversation Mr. Dille and Booth had.  
22 Pathfinder -- or Hicks has no knowledge about the  
23 relationship between Mr. Dille and Mr. Watson and the  
24 children or correspondence they had with each other. So  
25 we're not in a position to agree with these documents. It

1 appropriate to come in against Pathfinder.

2 MR. SHOOK: Your Honor, in that regard, the Bureau  
3 would point out that the children are part of Hicks  
4 Broadcasting.

5 JUDGE CHACHKIN: That's true. Aren't the children  
6 part of Hicks Broadcasting?

7 MR. HALL: They are minority owners. That doesn't  
8 mean that it we control their personal relationships with  
9 Mr. Watson and Mr. Dille in their personal communications or  
10 that we're aware of as a corporate entity.

11 JUDGE CHACHKIN: Could you be more specific as to  
12 what portion you object as far as the admissions go?

13 MR. HALL: Well, for example, Your Honor, we have  
14 no way to know the accuracy of request for admission one,  
15 whether John Dille had contact with someone from 1992 to  
16 1993. We have no basis ourselves for knowing the accuracy  
17 of that one way or another.

18 The same thing with request two, request four.  
19 I'm not prepared to go through them one by one. We have our  
20 own admissions that were made to us. If they had wanted us  
21 to admit these things, they should have asked us. We did  
22 answer a request for admissions, and those are Exhibit 4 and  
23 we're happy to let those come in against us.

24 JUDGE CHACHKIN: Let me put it this way.

25 Technically you are right that you have no knowledge of --

1 they're not admissions against you, but in any event it  
2 comes in as evidence. In the absence of any evidence --  
3 relevant evidence, in the absence of any evidence  
4 contradicting any of these admissions, then this is the only  
5 evidence in the record.

6 MR. HALL: Well, that's not fair to how Hicks to  
7 knowing those things.

8 JUDGE CHACHKIN: Well, if Hicks feels there  
9 something in here that they feel is somehow contrary to  
10 their position, I mean, you make evidence that -- for  
11 instance, if Mr. Dille is on the stand and these questions  
12 were asked and he answered them, you couldn't object on the  
13 grounds that they don't concern me. They are relevant  
14 testimony.

15 MR. HALL: They might not be admissions against  
16 Hicks Broadcasting.

17 JUDGE CHACHKIN: Well, they have to be admissions  
18 against it. They are relevant testimony in which I have to  
19 write up a decision based on all the testimony that is  
20 introduced.

21 Now, if there is something in here that you feel  
22 is adverse to your position, then presumably you will take  
23 this up at some time. You would bring it out. If it's not  
24 adverse to your position and it concerns only something you  
25 have no knowledge of, then it will come in the record as

1 evidence of a transaction.

2 MR. HALL: Your Honor, it's more than just a  
3 transaction. There are requests relating to peoples' states  
4 of mind.

5 JUDGE CHACHKIN: Yes.

6 MR. HALL: What peoples' intentions were. There  
7 has been no foundation laid that Hicks Broadcasting or David  
8 Hicks would have any reason to know about any of these  
9 things, to the extent that it's deemed admitted by  
10 Pathfinder.

11 JUDGE CHACHKIN: Nobody is claiming that Hicks is  
12 a party to it if it wasn't a party to a transaction. I  
13 mean, obviously if the transaction indicates something which  
14 involves Dille and Booth, for instance, and Hicks was not a  
15 party to the transaction, then it's not coming in that Hicks  
16 was a party to the transaction.

17 MR. CRISPIN: Your Honor, these are fairly stated,  
18 these are admissions made by Pathfinder. That involves the  
19 issue as to Pathfinder. Anything Pathfinder admits in these  
20 admissions, it can no longer contest. It's been conceded.

21 JUDGE CHACHKIN: That the point.

22 MR. CRISPIN: And as you point out, it's not an  
23 admission on the part of Hicks, and if Hicks wishes to  
24 contest it, they could bring forth evidence. Just because  
25 it's being admitted into the record does not mean it's an

1 admission against Hicks. But if there is no evidence  
2 offered by Hicks, that's exactly the point.

3 MR. JOHNSON: I don't disagree with my friend, Mr.  
4 Crispin, very often, and I think he's correct as it relates  
5 to Pathfinder. We do not object to the admission. The  
6 documents, I think, are a different question, but the  
7 admission as to Pathfinder we have no objection.

8 And I submit just as an aside, that the  
9 discussion, which is important as it relates to the  
10 documents, is less important as it relates to these  
11 admissions because I suspect, although I don't know this,  
12 that Mr. Hall may not object to the admission of Hicks'  
13 admissions into the record. So it may well be the case, Mr.  
14 Shook, as to them being admitted for limited purposes, you  
15 get all that you want out of that.

16 But I do agree with Mr. Crispin this far. The  
17 Bureau has the burden of proof in this case, and consistent  
18 with that burden of proof we have a right, which I assure  
19 you we will not exercise, to put on no case, Your Honor.  
20 And in that context it would be unfair for them to have to  
21 meet their burden of proof against us, or against Hicks to  
22 an admission of opposing party.

23 As I say, I think the debate as it relates to the  
24 admissions is illusory because they are going to come in for  
25 some purpose and we're arguing about whether they are coming

1 in for all purposes, but the combined effect of the two may  
2 be the same.

3 If Mr. Shook disagrees with me, then we need to  
4 fight about this. If he doesn't, then it may be that the  
5 discussion as it relates to the documents in the depositions  
6 is really more important.

7 JUDGE CHACHKIN: Well, I'm going to receive  
8 Exhibit 2 as admissions made by Pathfinder Communications  
9 Corporation the request for admissions by the bureau. The  
10 parties can argue to what extent they may be relevant to  
11 Hicks, but it seems to me it's only relevant whereby there  
12 is something in this exhibit whereby Mr. Dille says  
13 something which is contrary to Hicks' interest. But we'll  
14 have to see what comes in the record. You're on notice.  
15 This is the evidence given by Mr. Dille as if he was on the  
16 stand.

17 So it's coming in as admissions as Pathfinder -- I  
18 mean, Bureau Exhibit No. 2 is received.

19 (The document referred to,  
20 having been previously marked  
21 for identification as MMB  
22 Exhibit No. 2, was received  
23 into evidence.)

24 MR. JOHNSON: He's not on the stand. They can  
25 call him to meet their burden of proof.

1 JUDGE CHACHKIN: I'm saying --

2 MR. JOHNSON: I'm just talking to with Mr.  
3 Crispin. Mr. Crispin and I are having an academic debate,  
4 Judge Chachkin.

5 JUDGE CHACHKIN: I'm saying in lieu of his  
6 testifying, he's giving admissions. It may be that these  
7 admissions standing alone are not sufficient, and maybe they  
8 are assuming you rested and didn't put any evidence in.

9 MR. CRISPIN: And, Judge, if Hicks disagreed with  
10 something that Pathfinder admitted to, they would be  
11 entitled to call Mr. Dille as an adverse witness.

12 JUDGE CHACHKIN: Absolutely.

13 MR. CRISPIN: And they could test his knowledge.  
14 So the point that they didn't get a chance to cross-examine  
15 here is irrelevant. They have their chance when they put  
16 their case on.

17 JUDGE CHACHKIN: All right. Let's go to the  
18 depositions, is that -- or are there some other pages?

19 MR. SHOOK: There are some documents, Your Honor.

20 JUDGE CHACHKIN: Thirty-one to 115.

21 MR. SHOOK: Yes, sir.

22 JUDGE CHACHKIN: Are there any objection to those  
23 documents?

24 MR. HALL: Yes, with certain of them, Your Honor.  
25 There are certain documents that are duplicate as far as

1 authenticity requests between the ones that were made to  
2 Pathfinder and the ones that were made to Hicks.

3 For example, Attachment 3, which is -- I'm sorry,  
4 Attachment 2, I believe it's page 31; page 1 -- I'm sorry,  
5 Exhibit 1, I don't believe that this has even been  
6 introduced -- reviewed with any of the witnesses we've had  
7 so far.

8 JUDGE CHACHKIN: What is that?

9 MR. HALL: It's page 31 of Exhibit 1.

10 JUDGE CHACHKIN: Thirty-one of Exhibit 1.

11 What's your problem with this?

12 MR. HALL: Well, as Hicks Broadcasting, it's a  
13 hearsay document, Your Honor. Pathfinder has agreed that  
14 it's authentic, but we obviously aren't in a position to say  
15 one way or another on that, but if it's being offered for  
16 the truth of the matter asserted, it's hearsay with respect  
17 to Hicks Broadcasting.

18 JUDGE CHACHKIN: Well, both Mr. Dille and Mr.  
19 Hicks are going to testify, and they could contradict it if  
20 they wish. I'll receive it.

21 MR. HALL: Well, Your Honor, it's their burden  
22 foundations as to what these documents are. There has been  
23 no witness put on the stand here as to what this document  
24 even is. I mean authenticity is one hurdle that they  
25 apparently surpassed with the admission, but he's got to so



1 relevance and admissibility, and there has been no testimony  
2 on that. Putting a document into a binder and not asking  
3 the witnesses it, they're not allowed to put them in.

4 JUDGE CHACHKIN: How is this relevant, Mr. Shook?

5 MR. SHOOK: Your Honor, the document is from Mr.  
6 Dille and the document, as far as we're concerned, speaks  
7 for itself in terms of what the parties have talked about  
8 and what their understandings are at this point.

9 And in that regard, I would specifically direct  
10 Your Honor's attention to the first two paragraphs of the  
11 document. We recognize that there may be testimony that  
12 will be elicited at a later point that interprets or --  
13 well, I'll use the word "interpret," interprets what was  
14 stated there, but we believe the meaning of the words are  
15 plain enough.

16 JUDGE CHACHKIN: So the contention is made that  
17 it's hearsay. It's one thing where you have admissions.  
18 It's another thing where you have authenticity. But if you  
19 want to offer something for the truth of the matter, the  
20 mere fact you have a letter without questioning the witness  
21 doesn't give you the right to offer the document.

22 MR. SHOOK: Well, vis-a-vis --

23 JUDGE CHACHKIN: What we will do is the cases  
24 where there are documents and where there are objections,  
25 you'll just have to wait until Mr. Dille and Mr. Hicks